



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chairman
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Rick Merrikin, Member
Drew Delaney, Assoc. Member

DECISION - BOARD OF APPEALS CASE NO. 15-19

FILE

**APPLICANT:
Andrew Segal**

LOCATION OF PROPERTY INVOLVED:

145 Production Road, Walpole, MA 02081
Parcel 46-30-2
Zoning District: Industrial

APPLICATION FOR:

A **Special Permit** under Section 5-B.4-D.D., of the Zoning By-Laws to allow motorcycle repair, at 145 Production Road, Walpole, MA 02081.

On August 21, 2019 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting whether to the grant the **Special Permit** to the Applicant.

The following members were present and voting:

John Lee, Chairman
Susanne Murphy, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Rick Merrikin, Member

A motion was made by Suzanne Murphy, seconded by Mary Jane Coffey, to grant a **Special Permit** under Section 5-B.4-D.D of the Zoning By-Laws to allow a motorcycle repair shop at 145 Production Road, Walpole, MA 02081.

The vote was **5-0-0 in favor**; therefore the application for this **Special Permit** is hereby **granted**, **subject to the conditions enumerated below**: (Lee, Murphy, Fitzgerald, Coffey and Merrikin voting in favor)

CONDITIONS:

The Applicant shall submit any renovation plans, if applicable, to the Fire Department for review.

The Applicant shall submit the most recent fire alarm test report for the building to the Fire Department for review.

REASONS FOR DECISION:

The property contains an existing structure. The existing structure is located in an Industrial Zoning District, and the Special Permit is only for the use of the structure, with no changes to the existing structure by the Applicant.

The Board finds that the Applicant was able to meet the requirements of Section 5-B.4-D:D of the Zoning By-law for the granting of a special permit for the use of a motorcycle repair shop in that:

FURTHER FINDINGS

It is the finding of the Board that the Applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws, which requires that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;

There are no specific criteria applicable to this special permit application.

(b) Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use within the existing building has adequate parking spaces to accommodate, under all normal conditions, the cars or motorcycles of occupants, employees, members, customers, clients and visitors. The Board finds that the use change to the existing building will not significantly affect traffic and pedestrian patterns in the immediate neighborhood. The Board therefore finds that this requirement is met.

(c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use within the existing building is a small business, consisting initially of the owner of the proposed shop. Thus, the proposed use will not generate an unreasonable number of visitors so as to adversely affect the immediate neighborhood. The Board therefore finds that this requirement is met.

- (d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;***

The Board finds that the existing structure is not being enlarged so there is no increase regarding lot coverage and there are no Section 5-G buffer zone requirements associated with this use.

- (e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;***

The Board finds that the proposed motorcycle repair use will be a small business, with small quantities of necessary materials for motorcycle repairs, and therefore will not be dangerous to the immediate neighborhood of the premises due to fire, explosion, emission of wastes, or other causes. The applicant represented to the Board that he would not store material quantities of hazardous materials on the premises and plans to utilize a recycling service to remove certain materials on a regular basis. As such, the Board finds that this criterion is met.

- (f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed use will be a small business e, with one employee, and three stalls for motorcycle repair, with all customer vehicles to be stored, and all work to be performed, inside the shop. Therefore, the Board finds that the proposed use will not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. As such, the Board finds that this criterion is met.

- (g) Shall not adversely effect the character of the immediate neighborhood; and***

The Board finds that the existing building lies within an existing industrial area, and that the proposed use is a permitted by special permit . The Applicant will not be altering the outside of the existing building, and therefore will maintain the character of the immediate area, and therefore does not adversely affect the character of the area. The Board therefore finds that this criterion is met.

- (h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.***

The Board finds that the proposed use within the existing building for motorcycle repair is not incompatible with other uses of the site and is appropriate for the immediate location and within the Industrial Zoning District. As such, the Board finds that this criterion is met.

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Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

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Said Special Permits are granted pursuant to Massachusetts General Laws c. 40A, s.9 which provides in pertinent part as follows:



"...special permits granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or Applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS

Robert Fitzgerald, Clerk

cc: Town Clerk

Board of Selectmen

Building Inspector

This decision was made on August 21, 2019 and filed with the Town Clerk on August 27, 2019.